



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JA:BGK:JHK:DCL:MMO

*610 Federal Plaza
Central Islip, New York 11722*

January 7, 2022

Honorable Joseph F. Bianco
United States Circuit Judge
United States Court of Appeals for the Second Circuit
Long Island Federal Courthouse
Central Islip, New York 11722

Re: United States v. Kenner and Constantine
No. CR-13-607 (S-2) (JFB)

Dear Judge Bianco:

The government respectfully submits this letter pursuant to Your Honor's directive on November 29, 2021.

As discussed at the conference held on November 29, 2021, and in the government's letter filed with the Court on December 13, 2021 (Docket Entry 1135), this Office and the Department of Justice in Washington ("the Department") have been actively working to obtain approval of the proposed settlement between Danske, Silverpeak and the government. This Office has had continuing and extensive discussions with the Department in an effort to obtain the requisite approval, and this Office and the Department are aware of, and endeavoring to comply with, the Court's request to obtain an expeditious decision on the proposed settlement.

While the government is working expeditiously to obtain a decision on the proposed settlement, given the amount involved the settlement must be approved by the Deputy Attorney General. *See* Justice Manual 9-113.200. Danske has asserted a claim of over \$200 million to a complex asset located in Mexico in a complex criminal prosecution that has been pending since 2013. Based on the complexity and the proposed settlement for the release of a multi-million-dollar asset, multiple offices within the Department, including the Money Laundering and Asset Recovery Section; the Criminal Division; the U.S. Marshals Service; the Office of International Affairs; and the Deputy Attorney General's Office, must independently review or be consulted on the proposed settlement. This requires that the individuals within each of these offices, who either are, or will be, reviewing the proposed settlement, must learn and understand the numerous extremely complicated facts and issues at bar in order to evaluate the settlement. Simply, the consultation and approval process needed to make an informed judgment on a settlement agreement in a case such as this takes time. Thus, the government respectfully submits that additional time to complete the requisite review process is necessary.

As the Court is aware, it has taken the government, Danske and Silverpeak a significant amount of effort and time to reach a proposed settlement, and, indeed, and as set forth in the government's December 13th letter, both Danske and Silverpeak have required and will require significant periods of time of their own to achieve this settlement. Thus, the government respectfully submits that it would be in the parties' best interest to allow the government the time it needs to finish the review process, rather than abandon the potential settlement and resume the litigation. To that end and if amenable to the Court, the government respectfully proposes that it file a letter on January 31, 2022, providing the Court with an update of the settlement status.

Respectfully submitted,

BREON PEACE
United States Attorney

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cc: All counsel of record by ECF